

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-663-DB-2016 (O&M)

Date of decision: 24.03.2022

Vedender

....Appellant

V/s.

State of Haryana

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Atul Pratap Dhankar, Legal Aid Counsel
for the appellant.

Mr. Saurabh Mago, AAG, Haryana.

Ritu Bahri, J.

The appellant has come up in appeal against the judgment dated 23.05.2016 and decree dated 24.05.2016 whereby he has been convicted and sentenced as under:-

<i>Offence</i>	<i>Sentence</i>
U/S 307 of IPC	To undergo imprisonment for life and to pay fine of Rs.10,000/-. In default of payment of fine, further undergo simple imprisonment for six months.
U/S 25 of Arms Act	To undergo rigorous imprisonment for five years and to pay fine of Rs.3,000/-. In default of payment of fine, further undergo simple imprisonment for three months .

The case set up by the prosecution is that on 02.12.2013, information was received by SI Mohammad Illias Khan from Police Post, PGIMS, Rohtak that Dr. Ashish Dahiya was admitted in hospital with fire injury. One Mahender Singh Dalal, who was working as Assistant in the Hotel Management Department, M.D.U., Rohtak told the police that Dr.

Ashish Dahiya was working as Director in the M.D.U., Rohtak. The Director room and his room were in the same building. On 02.12.2013 at about 10:30 a.m., Dr. Ashish Dahiya called a meeting of the office staff and that meeting lasted till 11 a.m. At about 11:15 a.m., when Dr. Ashish Dahiya was sitting in his office, his ex-student Vedender entered the office and asked for his roll number slip from him. Dr. Ashish Dahiya told him to collect the same from the front office and at that time Mahender Singh Dalal was sitting in his office. He heard a noise that Vedender was telling the Director that he would teach him a lesson for not giving him roll number slip and heard a pistol shot noise. When Mahender Singh Dalal went inside the office of the Director, he saw that Vedender was carrying a pistol in his hand and fired on Dr. Ashish Dahiya with an intention to kill him. When Vedender was loading third round in the pistol, he raised the noise. On hearing the same, 10-15 students and staff employees came at the place of occurrence and Vedender ran away alongwith his pistol from the place of occurrence. His identity card was found lying on the table on the place of occurrence. Mahender Singh Dalal and other employees brought Dr. Ashish Dahiya in PGIMS, Rohtak. Thereafter FIR No. 499 dated 02.12.2013 under Section 307 IPC and 25/54/59 of the Arms Act was registered against Vedender-accused. He was charged for committing offences under Section 307 IPC and Section 25 of the Arms Act. The prosecution examined 13 witnesses to prove its case.

The FSL report was tendered by the Public Prosecutor Ex.PC, Ex.PD and Ex.PE. The accused gave his statement and stated that he does not want to answer any question and gave his written submission Ex.DA.

The identity card of the accused was effected from the place of occurrence

and the recovery of pistol from the accused proved the case set up by the prosecution against the accused.

Complainant Mahender Singh Dalal appeared as PW2 and in his testimony, he stated that at the time of occurrence, he was standing with Dr. Anup near the inner door leading to the room of Dr. Ashish Dahiya. He also stated that distance between the door of his room and the inner door of Dr. Ashish Dahiya was 10 ft. He tried to apprehend the accused but when accused aimed pistol on him, he did not apprehend him out of fear. The presence of Mahender Singh Dalal was established by the testimonies of Dr. Ashish Dahiya (PW1) and Dr. Goldy Puri (PW6). Mahender Singh Dalal was also present in the hospital at the time of medico legally examination of Dr. Ashish Dahiya, which further established his presence at the place of occurrence. He had told the name of Vedender to the police and had done his duty. Place of occurrence was verified by the police and, thereafter, site plan (Ex.PK) was prepared on 23.03.2014 by Head Constable Sant Kumar. The injuries sustained by Dr. Ashish Dahiya was duly brought on record with the help of testimonies of Dr. Sandeep (PW-4) and Dr. Mayank (PW-12).

Dr. Goldy Puri (PW6), the eye witness of the occurrence in his testimony stated that he did not try to catch the accused as his attention was towards the injured.

The FSL report (Ex.PC) further strengthens the prosecution case and the relevant portion is reproduced as under:-

- “1. The countrymade pistol marked as W/1 (Chambered for .315” cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.
2. The .315” fired cartridge case marked as C/1 and .315” fired

bullet marked as BC/1 have been fired from countrymade pistol marked as W/1 (recovered from accused Vedender) and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks.

3. No definite opinion could be formed regarding the linkage of .315” fired cartridge case marked as C/2 with respect to Countrymade pistol marked as W/1 due to lack of sufficient comparable individual characteristic marks.

4. The holes on the Shirt and Coat/Blazer contained in parcel No.I & IV respectively have been caused by bullet projectile(s).”

The delay in sending the case property to FSL did not prejudice the case of the accused in any manner. The pistol could not be produced before the District Magistrate because at that time the same was deposited in FSL Madhuban. The trial Court, after going through the testimonies of the injured-Dr. Ashish Dahiya (PW1), complainant/eye witness Mahender Singh Dalal (PW2) and Dr. Goldy Puri (PW6) and the entire evidence led by the prosecution established beyond doubt that accused Vedender who had come to the office of Dr. Ashish Dahiya had shot him with an intention to kill him for not issuing roll number slip to him, convicted the accused Vedender.

Mr. Atul Pratap Dhankar, Advocate, was appointed as Legal Aid counsel for the appellant on 02.03.2022 to assist the Court. He could not refer to any evidence which could put a dent on the case presented by the prosecution.

Keeping in view para 21 of the impugned judgment coupled with FSL report, the conviction does not require any interference.

However, another ground which is to be taken into account that conviction

under Section 307 IPC is on higher side as in the facts of the present case, the appellant was an ex-student of the University and as per Dr. Ashish Dahiya (PW1), he had misbehaved with him 2-3 times earlier and when he demanded roll number slip, Dr. Ashish Dahiya told him to collect the same from the front room of his office and on this appellant Vedender got angry and said that he would teach him a lesson for not giving roll number and in anger, he took out countrymade pistol from his paint and attacked to kill him. Due to injuries, one kidney of Dr. Ashish Dahiya was damaged and the doctor had to remove the same during surgery. 30% of the intestines of Dr. Ashish Dahiya were damaged which doctor had to remove by way of surgery and one bullet is still in his body near back bone which the doctor could not take out.

Dr. Mayank appeared as PW12 and stated that he was a member of the team which conducted the operation of Dr. Ashish Dahia. He further stated that three bullet injuries on abdominal wall including entry and exit wound were present on the abdominal cavity. The nature of the injuries was duly explained by him.

As per the testimony of Dr. Sandeep (PW4), he medico legally examined Dr. Ashish Dahiya and he gave opinion that injury No.1 mentioned in MLR Ex.PJ was dangerous to life. Hence, the nature of injuries suffered by the injured Dr. Ashish Dahiya were grievous in nature and if timely medical attention was not given to him, it would have caused more harm to him.

As per FSL report dated 28.03.2014 (Ex.PC), the Countrymade pistol marked as W/1 (Chambered for 0.315 cartridges) was the firearm and .315” fired cartridge case marked as C/1 and .315” fired bullet marked as

BC/1 have been fired from Countrymade pistol marked as W/1 which was recovered from accused Vedender and as per FSL dated 20.06.2014 (Ex.PE) shirt (Ex-1(a), Banian (Ex-1b) and swab was stained with the human blood (Ex-2).

The appellant was convicted under Section 307 IPC and with respect to the quantum, reliance can be made to a Supreme Court judgment passed in ***Suryakant Baburao @ Ramrao Phad vs. State of Maharashtra and others***, decided on 30.07.2019. In the said case, Supreme Court was examining conviction of one accused Devraj who had been convicted for 7 years by the trial Court. However, the High Court of Bombay had reduced the sentence from 7 years to 5 years. Aggrieved by the order of High Court of Bombay, the complainant Suryakant filed appeal before the Supreme Court. The role attributed to Devraj was that he took out pistol from his waist and fired one shot at Chandrakant (PW6) on his chest and when Suryakant (PW7) tried to intervene, he fired a bullet from his pistol which hit on the left knee of Suryakant. Both the injured were taken to the hospital and were given treatment. The conviction was based on the evidence given by the injured eye witnesses Chandrakant (PW6), Suryakant (PW-7) and eye witness Ram Phad (PW4) as well as medical evidence. The Supreme Court referred to judgment of ***State of Punjab vs. Bawa Singh, 2015(1) RCR Criminal 757*** in which it was observed that undue sympathy to impose inadequate sentence would lead more harm to the justice system to undermine the public confidence in the efficacy of law. Further, a reference was made to ***Ravinder Singh Vs. State of Haryana, 2015 (3) RCR (Criminal) 698*** and ***Sevaka Pereumal and another vs. State of Tamil Nadu, 1991(2) RCR (Criminal) 427*** wherein the view observed in ***State of***

Punjab's case (supra) was re-iterated. Keeping in view the nature of injuries caused to Chandrakant (PW6) and Suryakant (PW7), the Supreme Court allowed the appeal partly and the accused Devraj was sentenced to undergo rigorous imprisonment for 6 years and six months and maintained the fine amount imposed by the High Court of Bombay.

The Supreme Court in *Criminal Appeal No. 931 of 2015* titled as *Ravinder Singh vs. State of Haryana and others* was examining a case where four accused persons had been convicted for seven years under Section 304 Part II and sentenced to undergo 7 years rigorous imprisonment by the trial Court. In the said case, the accused had inflicted injuries on the deceased Duli Chand which caused his death. The said appeal was disposed of by the Supreme Court by enhancing the fine from Rs.25,000/- to Rs.1,25,000/- and sentence was reduced to the period already undergone by each of the accused despite the fact that the injured had died and in para 9 it was observed as under:-

9. Question of sentence is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases. Law courts have been consistent in the approach that a reasonable proportion has to be maintained between the seriousness of the crime and the punishment. While it is true that sentence disproportionately severe should not be passed that does not clothe the court with an option to award the sentence manifestly inadequate. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. In *State of Karnataka vs. Krishnappa, 2000 (2) RCR (Criminal) 459: (2000) 4 SCC 75*, this Court held thus:

“...The sentencing courts are expected to consider all

relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on [pic] innocent helpless girls of tender years, as in this case, and respond by imposition of the proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced. The High Court, in the facts and circumstances of the case, was not justified in interfering with the discretion exercised by the trial court and our answer to the question posed in the earlier part of the judgment is an emphatic - No....”

The Supreme Court in ***Criminal Appeal No. 1012 of 2009*** titled as ***Neelam Bahal and another Vs. State of Uttarakhand*** was examining a case where injuries were inflicted with the knife and as per the opinion of Doctor, the injuries were dangerous to life. However, the said fact was not mentioned in the medical certificate issued by Dr. S.M. Sehgal (PW4) and hence in this backdrop, conviction under Section 307 IPC was set aside and the accused Rakesh Bahal was convicted under Section 326 IPC. Keeping in view the age of the accused being 25 years, sentence was reduced from 7 years to the period already undergone.

The learned single bench of this Court in ***C.R.A. No. 1359-SB-2002*** titled as ***Suraj Bhan Vs. State of Haryana*** was examining a case in which the accused was sentenced for 7 years and one month under Section

307 IPC. The accused-Suraj Bhan had caused multiple grievous injuries on the head with a brick repeatedly in order to kill the victim. The sentence was reduced to 5 years keeping in view that there was no history of previous involvement in any other criminal case and he had minor children, old parents and there was no other male member in his family to look after them.

In the facts of the present case, as per the opinion Ex. PG, given by Dr. Sandeep (PW4), injury No.1 was declared to be dangerous to life and due to injuries, one kidney of Dr. Ashish Dahiya was damaged and the doctor had to remove the same during surgery. 30% of the intestines of Dr. Ashish Dahiya were damaged which doctor had to remove the same by way of surgery and one bullet is still in his body near back bone which the doctor could not take out.

The appellant was a student and was carrying anger towards Dr. Ashish Dahiya. He committed the crime keeping in view that roll number slip had not been issued to him by the injured Dr. Ashish Dahiya. The consequence of being angered could not be measured by the appellant at such a tender age being young. In this backdrop, conviction for life is very harsh as per the Supreme Court judgment passed in *Neelam Bahal and another's case (Supra)* that even in case of grievous injuries, conviction under Section 307 was not awarded. Further, as per *Suraj Bhan's case (supra)*, the sentence under Section 307 IPC was reduced from 7 years and one month to 5 years.

Keeping in view of above observations, the appeal is dismissed. However, the sentence of the appellant-Vedender is being reduced from life imprisonment to 7 years.

Pending application stands disposed of.

(RITU BAHRI)
JUDGE

24.03.2022
Divyanshi

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No